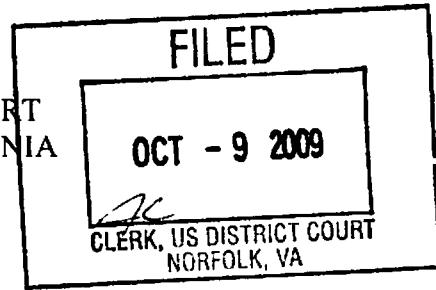


IN THE UNITED STATE DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Norfolk Division - In Admiralty



MCALLISTER TOWING AND TRANSPORTATION  
COMPANY, INC.,

Plaintiff,

v.

Case No. 7:09cv502

KOBELCO EAGLE MARINE, INC.,

Defendant.

Serve: Secretary of the Commonwealth

### **COMPLAINT**

NOW COMES Plaintiff, McAllister Towing And Transportation Company, Inc. ("McAllister") and for its Complaint against Kobelco Eagle Marine, Inc. ("Kobelco"), states as follows:

### **JURISDICTION**

1. This is an action within this Court's admiralty jurisdiction pursuant to 28 U.S.C. § 1333 and Federal Rule of Civil Procedure 9(h). This action otherwise falls within this Court's jurisdiction pursuant to 28 U.S.C. § 1332.

### **THE PARTIES**

2. McAllister is a Delaware corporation engaged in the maritime towing business.

3. Kobelco is a New York corporation engaged in the production and installation of products for water and oil lubricated shafts and thrusters.

**STATEMENT OF FACTS**

4. McAllister and Kobelco entered into a contract on or about October 1, 2008, by which Kobelco agreed to provide and install a Kobelco water lubricated shaft seal system for a single screw 14" shaft ("Seal") in the Tug JANE MCALLISTER ("Tug") at Colonna's Shipyard ("Colonna's") in Norfolk, Virginia.

5. The Seal was delivered by Kobelco to Colonna's and installed on the Tug at Colonna's by a Kobelco certified technician during December 2008 and January 2009.

6. McAllister paid Kobelco the price of \$15,926.80 for the Seal and its installation.

7. On May 13, 2009, while the Tug was underway off of San Juan, Puerto Rico, the Seal failed, allowing the engine room to flood with sea water and requiring the captain to put the Tug aground to avoid the loss of the Tug and its crew.

8. Surveys were conducted on May 17, 2009, through May 19, 2009, with representatives of McAllister, Kobelco, Colonna's, and the United States Coast Guard present.

9. The joint survey report issued pursuant to these surveys found that the Tug had begun taking on water as a result of failure of the Seal caused by the use of incorrectly-sized bolts in its installation.

10. As a result of its having taken on water pursuant to the failure of the Seal, the Tug suffered severe damage and required extensive repairs.

11. McAllister suffered total damages of \$359,876.68 in lost revenue, labor costs, and repair costs because of the incorrect installation of the Seal by Kobelco.

**COUNT 1: BREACH OF CONTRACT**

12. The allegations contained in paragraphs 1 through 11 are incorporated by reference as if set forth fully herein.

13. Kobelco contracted with McAllister to install the Seal in the Tug according to Kobelco specifications.

14. Kobelco breached the contract by installing the Seal using English bolts instead of the metric bolts called for in the Kobelco specifications.

15. As a direct and proximate result of Kobelco's breach of the contract, the Seal failed, causing McAllister to suffer damages.

**COUNT II: BREACH OF THE IMPLIED WARRANTY OF WORKMANLIKE PERFORMANCE**

16. The allegations contained in paragraphs 1 through 15 are incorporated by reference as if set forth fully herein.

17. Implied in the contract was Kobelco's warranty of workmanlike performance in the installation of the Seal in the Tug.

18. Kobelco breached the warranty by incorrectly installing the Seal using English bolts instead of the metric bolts called for in the Kobelco specifications.

19. As a direct and proximate result of Kobelco's breach of the warranty of workmanlike performance, the Seal slipped and failed, causing the Tug to take on water and McAllister to suffer damages.

**COUNT III: BREACH OF THE WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE**

20. The allegations contained in paragraphs 1 through 19 are incorporated by reference as if set forth fully herein.

21. Implied in the contract was Kobelco's warranty that the Seal would be fit for its particular purpose of sealing the shaft against leakage.

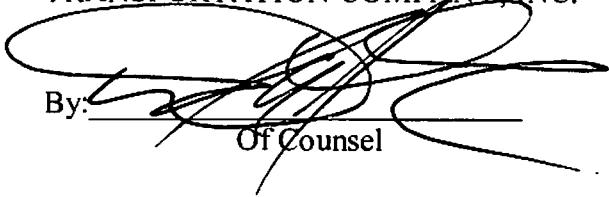
22. Kobelco breached the warranty by incorrectly installing the Seal using English bolts instead of the metric bolts called for in the Kobelco specifications, causing the Seal to fail.

23. As a direct and proximate result of the Kobelco's breach of the warranty of fitness for a particular purpose, the Seal failed, causing the Tug to take on water and McAllister to suffer damages.

WHEREFORE, McAllister Towing And Transportation Company, Inc. requests entry of judgment against Defendant Kobelco Eagle Marine, Inc. as follows:

- a. Compensatory damages in the amount of \$359,876.68;
- b. Attorneys' fees;
- c. Costs; and
- d. Such other and further relief as justice may require.

MCALLISTER TOWING AND  
TRANSPORTATION COMPANY, INC.

By:   
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